

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

60571

FILE: B-184601

DATE: January 8, 1976

MATTER OF: Midwest Telecommunications Corporation

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251**DIGEST:**

1. Unsuccessful offeror's protest based on ground that it should have been selected for award because it offered lowest price on its alternate proposal is denied since agency reasonably determined that alternate proposal did not meet specification requirements.
2. Where there are no technical considerations which outweigh cost factor, proposals apparently being substantially same, technically, award to low offeror is proper since price is controlling factor.

By telex message of August 7, 1975, Midwest Telecommunications Corporation (Midwest) (formerly Video Electronic Systems, Inc.) protested the award of a contract to another firm under request for proposals (RFP) DAAG08-75-R-0206, issued by the Procurement Directorate, Sacramento Army Depot.

RFP -0206, issued on March 17, 1975, under authority of 10 U.S.C. § 2304(a)(2) (1970), was for color conversion, modernization and expansion of the Educational Television System (ETV) at the United States Air Force School of Applied Cryptologic Sciences, Goodfellow Air Force Base, Texas.

Six proposals were received. Negotiations were opened with all offerors by letter of June 6, 1975, which set June 23, 1975, as the closing date for negotiations. On June 22, 1975, Midwest submitted its best and final offer. The best and final offers were submitted for engineering evaluation on June 26, 1975, with the resulting recommendation that award be made to Alexander Electronics, Inc. (Alexander), the low offeror. Award was made to Alexander on June 30, 1975. By letter of the same date, Midwest was advised of the rejection of its offer. The following reasons were given by the agency for the rejection of Midwest's offer:

1. Midwest's offer of industrial grade tubes in the live studio cameras was not acceptable.
2. Engineering was unable to evaluate the ISI 611 switcher offered by Midwest since no published information was made available.
3. Spare parts provisioning for 1 year was inadequate.

Midwest's first contention in support of its protest appears to be that Alexander's offer of \$388,510, less a 3-percent discount, included item 0002 for spare parts and that Alexander would be low only on the basis of its base offer on item 0001. Paragraph D-7, page 19, of the solicitation states:

"Item 0002 will not be considered for evaluation purposes as a basis of award. Offerors may be considered unacceptable for failure to respond to this item."

The contracting officer's notice of award letter of June 30, 1975, states that "Award in the amount of \$388,510.20 less 3% discount, 20 days, for Items 0001 and 0002 was made to Alexander Electronics, Inc., * * *." However, the record indicates that Alexander was low offeror as evaluated upon item 0001 and that item 0001 was the only item considered for evaluation purposes. The award price to Alexander for item 0001 was \$366,995.20, less the 3-percent discount of \$11,009.86 for a total of \$355,985.34, which is \$17,260.66 less than Midwest's best and final offer of \$373,246.

Midwest, while apparently conceding that Alexander's offer based on its price for item 0001 was low, states that Alexander would not have been low had the procuring activity considered Midwest's alternate proposal which offered IVC-500 series type cameras. Midwest contends that these cameras conformed to amendment No. 0003, dated June 6, 1975. The reason given for the rejection of Midwest's alternate proposal was that the cameras offered by Midwest utilized industrial grade plumbicons rather than broadcast grade tubes. Midwest questions the basis given for the rejection of its alternate

offer, stating that neither the statement of work nor the specifications call for broadcast grade tubes. Midwest points out that its initial proposal offered some industrial grade tubes and the Government made no mention of the nonacceptability of these tubes.

According to the contracting officer, Midwest did not submit an alternate proposal based on furnishing the IVC-500A called for by amendment No. 0003. What Midwest did offer to furnish in its alternate proposal was the IVC-500ACR cameras which are not the same as or equal to the IVC-500A. Although, it should be pointed out that Midwest in its base proposal on its best and final offer did offer to furnish the CEI-280 or the IVC-500A systems with industrial grade tubes. This offer was, however, at its base price of \$373,246 without the \$19,900 reduction in price which was offered in connection with its alternate proposal. The record indicates that the IVC-500A is normally supplied with XQ1070 plumbicons which are broadcast grade tubes and, therefore, when an offer specifies IVC-500A cameras, broadcast grade tubes would be expected, rather than industrial tubes. The IVC-500ACR utilizes industrial grade tubes which are not acceptable to the procuring activity for reasons which will be explained later. Additionally, the contracting officer points out that not only is the IVC-500ACR unacceptable because it utilizes industrial grade tubes, but it also fails to "equal" the 10:1 zoom specified for the IVC-500A in amendment No. 0003.

Regarding Midwest's contention that its initial proposal offered some industrial grade tubes and that no mention was made by the Government at that time of nonacceptability because of industrial grade tubes, the contracting officer admits that this statement is true. However, she points out that Midwest's original proposal offering to furnish a camera which utilized some industrial grade tubes was based on the CEI camera which has a built-in correction to compensate for the lower grade industrial tubes. The use of industrial tubes in the blue and red channels of the CEI-280 studio cameras proposed in Midwest's initial offer was acceptable because this camera's optics minify the red and blue images to such an extent that minor imperfections in the transducer tubes are practically undetectable when using a broadcast grade tube in the green channel. However, the IVC-500A does not employ minifications and imperfections are very evident, especially if an industrial grade tube is used in the green channel. Also, it is pointed out that the CEI camera with industrial plumbicons in the red and blue

channels is acceptable since the CEI cameras scan the red and blue tube only over 75 percent of the available area and, additionally, they select industrial tubes that do not contain blemishes in the scanned area. The IVC-500 cameras do not contain these features, therefore, industrial tubes cannot be used without blemishes showing in the picture and degrading the entire project system to an unacceptable level. While Midwest contends that its alternate proposal met the requirements of the RFP, it is not our function to evaluate proposals. We have held that the determination as to whether a proposal is technically acceptable is primarily a matter of administrative discretion which will not be disturbed by our Office in the absence of clear showing that such determination was unreasonable. 52 Comp. Gen. 382 (1972); Austin Electronics, B-180690, July 26, 1974, 74-2 CPD 61. Also, see 52 Comp. Gen. 393 (1972) and International Research Associates, B-182344, May 8, 1975, 75-1 CPD 285. In the present case there has been no showing that such determination was unreasonable.

Also, it should be pointed out that, as mentioned above, in Midwest's initial base proposal offering to furnish the CEI-280 studio cameras, there was a mix of industrial and broadcast grade tubes. However, in its best and final offer Midwest changed its proposal so that all of the tubes were industrial grade which was unacceptable to the procuring activity. The record is not clear as to why the CEI-280 cameras would not be acceptable with the industrial grade tubes. However, we are of the view that this question need not be resolved, since Midwest was not the low offeror on the base proposal. Our Office has held that in situations where technical offers are substantially the same, price is the controlling factor. B-174947(1), August 30, 1972. There is no showing that even had Midwest's base proposal been acceptable that it was technically superior to Alexander's proposal or, for that matter, that there were any technical considerations which outweighed the cost factor. Thus, price was the controlling factor.

Midwest takes issue with the contracting officer's statement that engineering was unable to evaluate the ISI 611 switcher since no published information was made available. Midwest contends that its telegram of June 15, 1975, item 2, rebuts this and, in fact, the contracting officer's letter of June 6, 1975, stated that the Government had evaluated the switcher and wanted a confirmation of a point. Midwest further contends that this matter was discussed in its telegram of June 22, 1975. In its July 15, 1975, telegram (the contracting officer denies that there was a June 15 telegram) Midwest states that it submitted a factory specification data brochure on the switcher. Paragraph 3.2.3.2 of the

specifications requires the switcher to have provisions of double re-entry, special effects into mix and mix into effects. According to the contracting officer, the engineering technical evaluation of Midwest's proposal dated May 21, 1975, stated that it was impossible to tell if the proposed switcher had the re-entry characteristic and that Midwest was notified of this deficiency by the contracting officer's letter of June 6, 1975. Midwest was asked to confirm this point, but Midwest, in its wire of June 20, 1975, which took exception to or asked clarification of the issues in the June 6 letter, failed to comment on the Government's inability to evaluate the switcher. According to the contracting officer, at no time did the Government state that it had completely evaluated the switcher and that no descriptive literature was available in the Television Audio Support Agency (T-ASA) office on the switcher and Midwest never furnished any descriptive literature.

In its telegram of June 22, 1975, Midwest did state that the TSI 611 switcher accomplished the task of double re-entry and explained, in general terms, how this task was accomplished. According to the contracting officer, this explanation was not sufficient to evaluate the switcher. Also, she (the contracting officer) stated that the reproduced copy of the factory specification data sheet (mentioned by Midwest in its July 15 telegram) did not address itself to the double re-entry capability. The record does not indicate that any additional information was submitted, such as drawings, pictures, graphs, etc., upon which an evaluation could be made. While ordinarily such information if not furnished with the proposal can be furnished at any time during negotiations or prior to best and final offers, in the present case it does not appear that Midwest ever made any attempt to furnish the required information.

Midwest also contends that it did respond to item 0002 in that it did provide a spare list and did price this list. As previously mentioned, paragraph D-7 on page 19 of the solicitation provides that while item 0002 will not be considered for evaluation purposes, offers may be considered unacceptable for failure to respond to this item. On page 20 of the solicitation item 0002, entitled "Spare Parts," states "Recommended spare parts sufficient to cover one year maintenance requirements. A list of these parts, individually priced, to be furnished with the proposal * * *." (Underscoring added.) At no time did Midwest comply with this

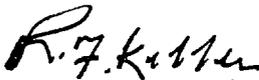
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requirement. On its best and final offer, Midwest did list the spare parts it proposed to furnish and the total price for these spare parts, but did not price the parts individually.

Finally, Midwest appears to be under the impression that one of the reasons that its proposal was rejected was that it failed to offer a 90-day delivery schedule. We are advised that while the Government desired delivery 90 days after date of award, a required delivery date was never established and proposals, including Midwest's proposal, offering a delivery schedule in excess of 90 days were considered. According to the contracting officer, Midwest's proposal was not rejected for failure to offer a 90-day delivery schedule, but rather because its proposal did not meet the requirements of the specifications (in the case of its alternate proposal) and was not the low offeror (in the case of its base proposal). However, it appears that Midwest's base proposal was rejected not only because it was not the low offer, but also because it did not meet the requirements of the specifications in that it utilized industrial grade tubes, and also because there was insufficient information to evaluate the ISI 611 switcher and the spare parts provisioning was inadequate.

From our review of the record in the instant case, we are unable to conclude that the Department of the Army has arbitrarily abused the discretion committed to it in evaluating the proposals or in making award to Alexander.

Accordingly, Midwest's protest is denied.


Deputy Comptroller General
of the United States